

# **LOWER PAXTON TOWNSHIP ZONING HEARING BOARD**

Meeting of June 23, 2016

Members Present

Greg Sirb  
Alan Hansen  
Watson Fisher

Also in Attendance

James Turner  
Amanda Zerbe  
Kristi Focht

**Docket 1385**

Continuation from May 26, 2016

Applicant: BRM ACSSOCIATES

Address: 6005 Blue Stone Ave.  
Harrisburg, PA 17112

Property Owner: BRM ACSSOCIATES

Property: 6005 Blue Stone Ave.  
Harrisburg, PA 17112

Article 7, Signs, Part 2. Ground Freestanding sign is permitted in IN, Commercial and Industrial districts. Maximum area of 40 square feet and maximum height of ten feet. The applicant is requesting a variance from maximum height sign height and area regulations and signs setback regulations in connection with the proposed new sign.

Fees Paid: April 25, 2016

Property Posted: June 13, 2016

Advertisement: Appeared in the Paxton Herald on June 8, 2016 and June 15, 2016

The hearing began at 7:04 p.m.

Mr. Staub noted that he has to recuse himself for this docket as he has a business relationship with the applicant. Mr. Tuner suggested that Mr. Sirb should take over as the Chairman of the meeting at this time.

Mr. Sirb noted that this meeting is a continuation from last month. He questioned Mr. Jason Hornung if he was sworn in last month. Mr. Hornung answers yes. Mr. Sirb also questioned if Ms. Zerbe was sworn in last month. She answers yes. Mr. Sirb questioned if this is a continuation from last month, stating docket 1385. Ms. Zerbe answered yes. Mr. Sirb questioned if all the notices were paid and posted. Ms. Zerbe answers yes. Ms. Zerbe noted that it was advertised in The Paxton Herald on June 8, 2016 and June 15, 2016. It was posted on June 13, 2016.

Mr. Sirb allowed Mr. Hornung to proceed with his testimony.

Mr. Hornung noted that there were no changes from the last meeting.

Mr. Sirb requested Mr. Hornung to give a brief run down. Mr. Hornung noted that he is planning to move the sign twenty feet, keeping it the same height, adding a LED sign and turning it ninety degrees.

Mr. Sirb questioned if Mr. Hornung would move the sign if needed if it was in the township right of way. Mr. Hornung answered yes.

Mr. Sirb questioned Mr. Hornung if there is anything else he would like to add, everything else is exactly the same. Mr. Hornung answered yes.

Mr. Sirb questioned if anyone in the audience would like to speak on Docket 1385.

Mr. Sirb swore in Don Haschert, 1508 Pine Hollow Court.

Mr. Sirb questioned where his address was in connection to the variance. Mr. Haschert answered he lives off of Locust Lane.

Mr. Haschert noted that he has a few questions.

Mr. Haschert noted that he paid to receive a copy of the application. Mr. Haschert noted that he had to wait five days to receive a copy and he only received it earlier in the day. He questioned if the board reviewed the application. Mr. Sirb answers yes.

Mr. Haschert noted that on the application there is no check mark in the check box and he is unclear on what the application is for. Mr. Turner answered that it is for a variance.

Mr. Haschert questioned the board on the second question of the application. Mr. Haschert noted that on the application it is checked no for representation but in the right to know packet that was received to him that day there is a letter from Mr. Peter Russo, Esquire. Mr. Haschert questioned the board if they have seen this letter. Mr. Turner answered that it is part of the application packet. Mr. Haschert noted that the letter is not signed. Mr. Haschert questioned if an attorney is being represented, was an attorney engaged for this. Mr. Hornung noted other than to draft the letter, no. Mr. Haschert noted that the letter states writing on behalf of my client. Mr. Hornung noted that he is here representing himself.

Mr. Haschert noted that in the documents he received that the letter was not signed and there is not a date of when it was received. Mr. Haschert questioned when the letter was received. Mr. Haschert questioned if the letter and the packet of information all came at the same time with no date stamp. Ms. Zerbe noted she believes the letter was brought in with the application. Ms. Zerbe noted it would not be date stamped.

Mr. Haschert questioned when the letter was submitted. Mr. Hornung answers he does not know the exact date of when the letter was submitted.

Mr. Haschert noted that his primary concern for this letter, with the sign, is the process the township would go through to get the sign moved. Mr. Haschert questioned the board if they can answer that. Ms. Zerbe answered that the attorney was incorrect in his statement in the letter. Ms. Zerbe noted there is not a township easement where the sign is going to be placed. Ms. Zerbe noted that it is a private storm water easement, for private impervious coverage.

Mr. Haschert questioned the grate on the property. Ms. Zerbe answered it is a grate for storm water.

Mr. Haschert questioned that the easement is for storm water. Ms. Zerbe answered correct.

Mr. Haschert questioned if the sign would need to be removed what the process would be. Mr. Haschert questioned if the supervisors would vote on that. Ms. Zerbe answered that the sign is on his property so he would have to move the sign.

Mr. Haschert questioned if the letter is not really relevant. Ms. Zerbe noted it was included in the packet to be given to the board.

Mr. Haschert questioned if the board is going to be acting on the letter as part of the application. Mr. Turner answered that the application with the letter is of any particular concern one way or another.

Mr. Haschert questioned for the actual square footage of the sign. Mr. Hornung answered he had all the paper work at the first meeting. Mr. Hornung noted that the board told him just to keep the same details. Mr. Hornung noted he did not know he was going to be ask to go over all the information again.

Mr. Haschert noted he had a copy of the sign. Mr. Haschert questioned if this is the copy. Mr. Hornung answered yes.

Mr. Haschert noted he did the calculation based on the size of the sign to be twenty-four by ninety-six.

Mr. Haschert questioned if it is true there will be space between the signs. Mr. Hornung answered yes, there will be a small space.

Mr. Haschert questioned if you are allowed to have two separate signs for the same business. Mr. Haschert noted he could see two signs for two separate businesses. Ms. Zerbe answered she would have to research that. Ms. Zerbe noted the sign ordinance says it can be, it is for the same business so the space between is not significant.

Mr. Haschert questioned the note on the sign design. Mr. Haschert noted the sign design states preliminary sign design, concept only. Mr. Haschert questioned if there is to be a final version of this application. Mr. Hornung answered it is concept design. Mr. Hornung noted it is a drawing of a sketch of what is to come. Mr. Hornung noted you cannot put up a final drawing until it is approved. Mr. Hornung noted this drawing is from the sign company.

Mr. Haschert questioned the board if they are approving a conceptual design or a final design. Mr. Sirb answered the board is approving what the testimony was in the previous hearing. Mr. Sirb noted that Mr. Haschert was not here for that meeting.

Mr. Sirb questioned Mr. Hornung if any changes were made from his previous testimony. Mr. Hornung answers no.

Mr. Sirb noted the board is approving the previous testimony.

Mr. Turner noted they are looking at the square footage not the structure of the sign.

Mr. Haschert noted that a free standing sign in Article Seven, Mr. Haschert questioned if insurance is required. Ms. Zerbe answered that is part of the sign permit process not the process with a variance.

Mr. Haschert questioned if there would be another meeting to go to. Ms. Zerbe answered when someone comes in with a sign permit, we receive a packet of information, all of the information, structure, and exact copy of the sign.

Mr. Haschert noted he now understands the process.

Mr. Sirb requested Ms. Zerbe to explain again what is before the board. Ms. Zerbe answered the size of the sign and the height.

Mr. Sirb questioned if the height is the same height sign as the sign that is there now. Mr. Hornung answered yes.

Mr. Sirb noted the square footage is not fifty-two square feet. Mr. Hornung answered yes.

Mr. Sirb questioned Ms. Zerbe what is allowable. Ms. Zerbe answered the height is allowed to be ten feet. Ms. Zerbe noted Mr. Hornung is moving it so he has a nonconforming, twenty feet high sign with forty square feet. Ms. Zerbe noted Mr. Hornung wants fifty two square feet.

Mr. Sirb noted that is what is before us.

Mr. Haschert answered ok.

Mr. Haschert questioned from the previous meeting how he would receive transcripts. Mr. Haschert questioned if they are posted on the web site.

Mr. Turner answered an order would have to be placed with whomever transcribes.

Mr. Haschert questioned the area of the sign and if there was a change of the location. Ms. Zerbe answered it meets the setback requirements. Ms. Zerbe noted the sign requirement is five feet out of the right of way and Mr. Hornung is six feet out of the right of way.

Mr. Haschert noted the Zoning Hearing Board on previous meetings has denied signs.

Mr. Sirb noted that Mr. Haschert seems against this sign. Mr. Sirb requested Mr. Haschert to articulate to himself and the board, what it is with the sign that will affect you or the neighborhood. Mr. Haschert answered he is concerned with the process. Mr. Sirb questioned the process. Mr. Haschert answered the process. Mr. Sirb questioned what part of the process.

Mr. Haschert noted he only received the information today to review and could not get the minutes. Mr. Haschert noted he wanted to make sure of the process and that it is implemented fairly. Mr. Haschert noted in 2007, Members First Federal Credit Union submitted for a variance similar to this application and one for Big Bob's Furniture. And the process was not in place.

Mr. Sirb questioned Mr. Haschert if he knows there is a twenty foot sign there now.

Mr. Haschert noted the sign is also being moved. Mr. Haschert noted if Mr. Hornung wanted to move the sign, tear the existing sign down, put it in the existing space he could see that. Mr. Haschert questioned moving the sign thirty feet towards Mountain Road.

Mr. Turner noted to Mr. Haschert that regarding standings he (Mr. Haschert) indicated he (Mr. Haschert) lived on Pine Hollow Court. Mr. Turner questioned Mr. Haschert how far away is that from the sign. Mr. Haschert answered a mile or two.

Mr. Turner questioned Mr. Haschert if he owns any property in the immediate vicinity of this application. Mr. Haschert answered no.

Mr. Sirb questioned if there was anything else.

Mr. Hansen noted it was nice to see Mr. Hascher and learn the process. Mr. Hansen questioned Mr. Haschert if he has done anything with other signs. Mr. Haschert answered not in the township. Mr. Haschert noted he had on other townships on other boards.

Mr. Hansen questioned Mr. Haschert and his concern for this sign. Mr. Haschert answered there is an ordinance, those are two heavily traveled roads. He noted he is trying to understand why this is going for a variance and others are not.

Mr. Sirb questioned if anyone in the audience would like to speak on Docket 1385.

Mr. Sirb questioned Mr. Forest Healy if he was sworn in at the last meeting. Mr. Healy answered you did.

Mr. Sirb requested Mr. Healy to state his name for the record. Mr. Healy answered Forest Healy, 5915 Shope Place.

Mr. Healy noted he is a few miles from the sign. Mr. Healy noted because of being a concerned citizen of this township he has a right to be here and be concerned. Mr. Healy noted the pictures from the package, shows a new sign. Mr. Healy questioned if the sign is a newly constructed sign or will they be moving the existing sign. Mr. Sirb noted that because he is moving the sign, he loses his grandfathered issue. Mr. Sirb noted because he is moving the sign he not has to come in for the variance.

Mr. Healy noted he heard moving the sign but a new one to be built. Mr. Sirb answered correct.

Mr. Healy questioned the sign to be in the new location where it is proposed to be. Mr. Sirb answered correct. Mr. Healy questioned correct. Mr. Sirb answered correct.

Mr. Sirb questioned if anyone in the audience would like to speak on Docket 1385.

Mr. Sirb swore in Janis Macut, 1509 Pine Hollow Road.

Mr. Sirb questioned Ms. Macut of the location of the sign to her property. Ms. Macut answered same distance, three miles.

Ms. Macut noted that again she is a concerned citizen. Ms. Macut noted she is a concerned citizen over the process, like Mr. Haschert noted earlier. Ms. Macut noted what has been witnessed in the past, the poor process through the township. Ms. Macut noted she hopes the Zoning Hearing Board would not make the same mistake. Ms. Macut noted that there is an ordinance on the books. Ms. Macut questioned two other companies were denied, why would it be changed now. Ms. Macut noted the Zoning Hearing Board is setting a precedence for the entire township, for one business owned by the township chairman who owns that business.

Mr. Sirb noted he has been on the board for twenty five maybe thirty years, he has let a lot of signs go through.

Ms. Macut noted that is not the issue.

Mr. Sirb noted the issue is if you think for one minute, I am going to speak for myself, that I would allow a sign, because it is owned by Hornung, I would take a little offense to that. Ms. Macut answered it is the precedence to be set here. Mr. Sirb noted there is not rule of precedence to be set here. He noted each variance stands on its own merits. He noted that is all we can do as the Zoning Board. He noted someone may come in later saying let have a variance, if his merit is not good I will deny it. He noted every variance stands on its own merit, bottom line. Ms. Macut noted she hopes he is right.

Mr. Hansen noted he is a little upset too, that we are making a decision because of that business. He noted he has not heard or seen from these people before. He thanked them for their concern and questioned them if they have an ulterior motive. Ms. Macut answered she lived in township all her life. She noted we have attended, quite heavily, the Board of Supervisor meetings and we are not happy with what we are seeing. She noted she is here to keep an eye on you folks. Sirb noted that is her right. Ms. Macut noted that it is her right, since day one, to make sure the process is being followed and you are doing your job; representing the Lower Paxton Township residents and not having a special agenda.

Mr. Haschert questioned if he could have a follow up question. Mr. Sirb answered he is allowed to have a follow up quesiton.

Mr. Haschert noted he would like the board to include the merits at this time.

Mr. Sirb questioned if anyone in the audience would like to speak on Docket 1385.

No response was heard from the audience.

Mr. Sirb questioned Mr. Hornung if he had anything further he would like to add. Mr. Hornung noted he thinks the merits of this is, it is already twenty feet high which he is not asking for anything different there. He also noted the size of the sign is going down, although it would still be above the allowable.

Mr. Sirb questioned Mr. Hornung on the size of the current sign. Mr. Hornung answers he believes in the seventies. Mr. Sirb noted that overall the sign would roughly decrease by twenty feet. Mr. Hornung answered yes. Mr. Sirb questioned if the height of the sign would remain the same. Mr. Hornung answered yes.

Mr. Sirb questioned if the Board has any further questions.

Mr. Dowling noted he was not present at the last meeting, so he will not be participating.

Mr. Sirb noted it would be himself, Mr. Fisher and Mr. Hansen.

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Mr. Sirb noted that the Board has 45 days to render a decision; he questioned if the board wished to take action on Docket 1385.

Mr. Hansen made a motion to approved Docket 1385 with the stipulation the sign be illuminated from 7 a.m. to 10 p.m.

Mr. Sirb questioned Mr. Hornung if he agrees to the stipulation. Mr. Hornung answered the LED manufacture noted that turning if off is bad for the sign. He questioned if at all possible for the sign to be left on 24 hours a day. He noted that if he has to he will but he would like to leave it on because of the recommendation from the LED manufacture.

Mr. Sirb noted to Mr. Hornung that there is give and take to everything in life. Mr. Hornung noted he would take it.

Mr. Sirb noted a motion has been made to accept Docket 1385 with the condition the light only appears from 7 a.m. to 10 p.m.


Mr. Fisher seconded the motion.

Mr. Staub requested Mr. Turner to conduct a roll call vote: Mr. Fisher, aye; Mr. Hansen, aye; Mr. Sirb, aye; and Mr. Staub, aye.

Mr. Staub noted that Docket 1385 has been approved with a condition.

The hearing ended at 7:36 p.m.

Respectfully submitted,



Kristi Focht  
Recording Secretary



IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
BRM ASSOCIATES : DOCKET NO. 1385

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance from maximum height and area requirement in connection with the replacement of an existing non-conforming pole sign. Hearings on the application were held on May 26 and June 23, 2016.

#### **Facts**

1. The applicant and owner of the property in question is BRM Associates, Inc. of 6005 Blue Bird Avenue, Harrisburg, Pennsylvania 17112. The applicant was represented at the hearing by Jason Hornung, CEO of Hornung Hardware, the user of the property.

2. The property in question is located on the southwest corner of Blue Bird Avenue and Mountain Road and consists of an approximately rectangular parcel. It is bounded on the south by the interstate off-ramp. The parcel is zoned commercial.

3. The property is improved with a commercial building used as a retail hardware store. A freestanding pole sign is located along Blue Bird Avenue. The existing sign is 20 feet tall and has an area of 60 square feet. It was damaged in a storm and the applicant seeks to replace it with a new freestanding sign which will be located closer to the intersection than the existing sign. The new sign will be 20 feet tall with an area of 52 square feet, consisting of a 176 square feet name panel and a 36 square feet LED EMC display panel.

4. Notice of the hearing was posted and advertisement made as required by the ordinance.

5. In addition to the applicant, a number of residents appeared before the Board in opposition to the variance. None of the individuals resided in or owned property in the vicinity of the affected property and they offered no specific testimony about the impact of the sign.

### **Conclusions**

1. Article 7 of the ordinance limits the maximum height of a sign in the applicant's location to 10 feet. The same article limits the maximum area to 40 square feet. The proposed sign would violate these sections of the ordinance.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property in question is burdened by a hardship in that the right of way along Mountain Road is extremely wide, limiting the visibility of a sign erected in conformity with the ordinance, requiring variance in both sign height and area.


4. Granting the variance will not alter the essential character of the neighborhood nor impair surrounding property values. The proposed sign is similar in both area and height to the existing sign and will impose no new burdens. Further, the property is bounded on three sides by public rights of way, thereby further diminishing the impact of the sign on surrounding properties.

**Decision**

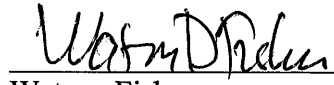
In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby granted allowing the erection of a freestanding business sign with a maximum area of 52 square feet and maximum height of 52 feet on the condition that illumination be limited to the hours of 7:00 a.m. to 10:00 p.m. In all respects construction of the sign shall be in strict conformity with the plans and testimony submitted to the Board.

Date: 7/29/16

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
\_\_\_\_\_  
Gregory P. Sirb

  
\_\_\_\_\_  
Allan Hansen

  
\_\_\_\_\_  
Watson Fisher

Board member Staub abstained from participation in this matter.

## LOWER PAXTON TOWNSHIP ZONING HEARING BOARD

Meeting of June 23, 2016

### Members Present

Jeff Staub  
Greg Sirb  
David Dowling  
Alan Hansen  
Watson Fisher

### Also in Attendance

James Turner  
Amanda Zerbe  
Kristi Focht

### Docket 1386

Applicant: Seltzer Properties LLC.

Address: 8002 Jefferson Street  
Hummelstown, PA 17036

Property Owner: Seltzer Properties LLC.

Property: 911 North Mountain Road  
Harrisburg, PA 17112

Section 603.H.2; 603.C.1; 603.D.1, – Design standard requirements, including required planting strips, aisles and driveways, in connection with a proposed new parking lot.

Fees Paid: June 1, 2016

Property Posted: June 13, 2016

Advertisement: Appeared in the Paxton Herald on June 8, 2016 and June 15, 2016

The hearing began at 7:40 p.m.

Mr. Staub noted Docket 1386. Mr. Staub noted the variance listed above. Mr. Staub noted the applicant to be Seltzer Properties LLC.

Ms. Macdonald-Matthes noted she will represent Seltzer Properties. She noted the address to be at 911 North Mountain Road.

Mr. Turner noted there are items the Board needs to get onto Township record.

Mr. Staub noted that it is customary for the Board to enter a copy of the application and any site plans as Township exhibits. He questioned Ms. Macdonald-Matthes if they had any objection. Attorney Paige Macdonald-Matthes answered we do not.

Mr. Staub questioned if the appropriate fees have been paid for this docket. Ms. Zerbe answered that the applicant paid the fee on June 1, 2015. Mr. Staub questioned if the application has been properly advertised and hearing notices posted. Ms. Zerbe answered that it was advertised in The Paxton Herald on June 8, 2016 and June 15, 2016, and it was posted on June 13, 2016.

Mr. Staub requested Ms. Zerbe to explain what ordinances pertain to this application. Ms. Zerbe answered that it has to do with Sections 603 C.1, 603 D.1 and 603 H.2.

Mr. Staub swore in Brian Seltzer, 8002 Jefferson Street, Hummelstown, PA 17036.

Ms. Paige Macdonald-Matthes noted that she represents Seltzer Properties. Ms. Macdonald-Matthes noted they are requesting a variance at the property located at 911 North Mountain Road. She noted at the time of purchase the property was represented to be in conformity with zoning laws and was further recommended to be used as a parking lot for an adjacent beauty salon located at 909 North Mountain Road. She noted the property of 909 North Mountain Road is not the property in question. She noted as a preliminary matter the property was rezoned residential and then rezoned commercial district. She noted Mr. Seltzer will testify his current inability to pave the lot in question. She noted that according to the zoning law for design standards the off street parking, in light of the fact the property was originally zoned residential, this is a pre-existing not conforming. She noted she will have Mr. Seltzer testify and the Board will happily find Mr. Seltzer can satisfy each of the elements.

Ms. Macdonald-Matthes questioned Mr. Seltzer that the address he gave is his residence. Mr. Seltzer answered correct.

Ms. Macdonald-Matthes questioned Mr. Seltzer about who owns the property at 911 North Mountain Road. Mr. Seltzer answered Seltzer Properties LLC.

Ms. Macdonald-Matthes questioned Mr. Seltzer about who owns the property at 909 North Mountain Road. Mr. Seltzer answered Seltzer Properties LLC.

Ms. Macdonald-Matthes questioned Mr. Seltzer when the property was purchased. Mr. Seltzer answered the property was purchased October 16, 2015.

Ms. Macdonald-Matthes questioned Mr. Seltzer on the purpose of the property. Mr. Seltzer answered the purpose of the property was to move his wife's salon from Lingelstown Road where she leases to a property she would own.

Ms. Macdonald-Matthes requested Mr. Seltzer to describe the particular issue and the granting of the variance. Mr. Seltzer noted upon obtaining the property he worked with Dan and was advised of the parking spaces. Mr. Seltzer noted that 909 property has a parking area but is

on a slope. Mr. Seltzer noted he talked with Dan about paving the 911 property for the handicap space and Dan thought that was a great idea to pave. Mr. Seltzer noted they proceeded ahead to pave but were denied. Mr. Seltzer noted he met with Amanda and Jeff and filed for a variance. He noted they are asking the Zoning Board for a variance to allow them to pave to add the parking spot area so the business can have a certificate of occupancy and not the temporary certificate of occupancy. Mr. Seltzer noted the handicap parking spot would be located beside the handicap ramp.

Ms. Macdonald-Matthes questioned Mr. Seltzer that the lot trying to create a handicap spot on was previously zoned residential. Mr. Seltzer answered it is his understanding Amanda had said at one point it had a trailer, a vacant trailer. Ms. Macdonald-Matthes questioned Mr. Seltzer in terms of the layout of this parcel, which is not something you had anything to do with. Mr. Seltzer answered correct.

Ms. Macdonald-Matthes requested Mr. Seltzer to tell the Board what he has done to prepare the property for the purpose of its usage and to make the property less of a blight. Mr. Seltzer noted when they acquired the property the previous owner lived out of state and did not know what the property looked like. He noted they cleaned up the front of the property so it would not be an eye sore. Mr. Seltzer noted he believed there was a hole where the trailer was and they had it filled and raised to all be uniform. He noted they removed some trees around electrical and cable wires. Mr. Seltzer noted they are working to groom the property to get it better for the neighborhood. He noted they are working to comply with the ADA.

Ms. Macdonald-Matthes questioned Mr. Seltzer if they have taken pictures on the work they have done. Mr. Seltzer answered that is correct.

Ms. Macdonald-Matthes questioned Mr. Seltzer if they are the pictures attached to the application. Mr. Seltzer answered that is correct.

Ms. Macdonald-Matthes questioned Mr. Seltzer if he took those pictures. Mr. Seltzer answered yes.

Ms. Macdonald-Matthes questioned Mr. Seltzer with regard to the specific variance your requesting on your application, you noted exactly what you need to do in order to have the handicap parking space for the business.

Ms. Macdonald-Matthes noted for the purpose of the record, Ms. Macdonald-Matthes requested Mr. Seltzer to state his intention in order to create the handicap parking space, critical and necessary to open his business. Mr. Seltzer answered that the intention of creating a handicap parking space by a 30x33 foot area, that will but up against McIlhenny Ave. Mr. Seltzer noted with the handicap parking space you can pull directly into that space.

Ms. Macdonald-Matthes questioned Mr. Seltzer about the 909 parking parcel as well. Mr. Seltzer answered on the 909 parcel there is parking spot already, it needs to be zoned, requiring chair ratio. Mr. Seltzer noted the only thing they don't have is a level spot. Mr. Seltzer noted that is why they are requesting a variance for 911.

Mr. Sirb questioned if 909 is used for parking. Ms. Macdonald-Matthes answered 911 will be used for parking.

Mr. Sirb questioned if 911 will be used for parking. Mr. Seltzer answered yeah.

Mr. Sirb questioned if 909 is where the beauty shop is now. Mr. Seltzer answered yes. Mr. Seltzer noted there is already a parking space there that fits three cars but it is not level.

Ms. Macdonald-Matthes noted it is not ADA compliant.

Mr. Sirb questioned Ms. Zerbe about the property 909, where the beauty shop meets the requirements for the number of employees. Ms. Zerbe answered yes, one to one.

Mr. Sirb noted they would like to move handicap parking to 911 because of that. Mr. Sirb noted the parking would be two spots max. He noted they cannot meet the handicap parking requirements so move that to 911. Mr. Seltzer answered that is correct.

Mr. Sirb noted when he drove past they are right along the road and there is no way to pull in there. Ms. Macdonald-Matthes noted that is absolutely correct. Ms. Macdonald-Matthes noted it is probably originally pre-existing, non-conforming.

Mr. Sirb questioned if the frontal requirements for 909. He noted you one spot is needed on 911. Mr. Seltzer answered that is correct. Mr. Sirb noted one spot.

Mr. Sirb questioned if they can fit one spot. Mr. Sirb questioned if they can meet that on the property now. Ms. Macdonald-Matthes answered you can't have handicap.

Mr. Sirb questioned that besides the handicap, is the requirement met for employees. Ms. Zerbe answered yes, they just can't use handicap.

Mr. Sirb questioned would there be a handicap spot on the other lot. Mr. Seltzer answered they are asking for more than a handicap spot.

Mr. Sirb questioned Mr. Seltzer on how many spots they are asking for. Mr. Seltzer answered a handicap as a primary and two more.

Mr. Sirb questioned three total spots.

Ms. Macdonald-Matthes noted the drawing attached in the packet as part of exhibit A.

Mr. Dowling questioned Ms. Zerbe if there is any way there can be development on the strip of land CRD district. Ms. Zerbe answered no. Mr. Dowling questioned even with a variance. Ms. Zerbe answered it would not be able to meet the set back requirements. Mr. Dowling questioned Ms. Zerbe there is no way to put a house, business, or parking lot on the property. Ms. Zerbe answered that it may be possible to put another mobile home on it, but you would need a variance for that. Mr. Dowling noted this was a small little lot laid out in

Linglestown. Ms. Zerbe noted that it was a dilapidated mobile home was required to be torn down several years ago.

Mr. Turner questions if there would be any objections to consolidating the lot. Mr. Seltzer answered there is one deed and two tax parcels.

Mr. Turner noted that for the benefit of the Township, take what is left and put it towards something usable. Mr. Seltzer noted he personally would not have a problem with it but he would not want to do it today because the project would exceed over 1,000 square feet.

Ms. Zerbe noted Mr. Seltzer is aware of the lot consolidation.

Mr. Turner questioned if the lots could be consolidated after the parking lot is complete. Ms. Zerbe noted that Mr. Seltzer has concerns with doing a lot consolidation. Mr. Turner noted that there could be a condition placed, 90 days after the variance is approved to follow up with a consolidation. Mr. Seltzer noted he had no problem with that. Ms. Macdonald-Matthes noted that with a proviso that the Township would not take a position to follow up with a storm water, engineering study because of it would fall under a pre-existing, non-conforming. Ms. Macdonald-Matthes noted she thinks she understands what Mr. Turner is getting at.

Mr. Turner questioned if they understood what he was trying to do or was he creating a bigger problem. Ms. Zerbe noted Mr. Seltzer could do a lot consolidation after. She noted she did not think the township would have any legal standings with the lot consolidation.

Mr. Staub noted he has driven past the sight a few times the past couple of days. He questioned Ms. Zerbe on the parking spaces that are needed. Ms. Zerbe answered two. Mr. Staub noted that he has heard there are three parking spaces on 909 and you are asking for three more. Mr. Staub noted that they are asking for six spaces when you only need two. Ms. Macdonald-Matthes noted that is incorrect. Ms. Macdonald-Matthes noted they do not have a handicap parking space. Mr. Staub questioned Ms. Zerbe on the parking spaces. Ms. Zerbe answered that this issue was created because of the way the building code is written and the requirements. Ms. Zerbe noted that Dan cannot issue the certificate of occupancy because of the grading of the lot. Ms. Zerbe noted they need to use this other lot for handicap accessibility.

Mr. Staub questioned Mr. Seltzer that they have three existing parking spaces. Mr. Seltzer answered there are three tight spaces. Mr. Seltzer noted he does not feel they are ADA compliant. Mr. Seltzer noted he feels that the spaces are only eight feet wide. Mr. Staub noted he would concede that there are only two functional parking spaces. Mr. Staub noted that there would also need to be a handicap space. Ms. Zerbe noted a space would have to be created for a van. Mr. Staub questioned why you would not build a handicap space that would be accessible for that land. Mr. Staub noted that the variance you requested would be minimal. Ms. Macdonald-Matthes answered the 909 lot has and slope. Ms. Macdonald-Matthes noted her client has this property that has been a blight of the Township. She noted that by granting the suggestion from Mr. Turner that would kill two birds with one stone.



Mr. Sirb noted each of the spaces meet the township requirements. Ms. Zerbe questioned the new spaces or existing spaces. Mr. Sirb answered the new spaces. Mr. Sirb noted that only one spot is really needed, a handicap spot on 911. Mr. Sirb noted that is all you need and are proposing on 911.

Ms. Macdonald-Matthes questioned what would happen with the rest of the property and the property and the Townships concern. She questioned why they cannot take the parcel that needs to be created into a handicap accessible spot and place two more additional parking spaces and do what Mr. Turner suggested. She noted it would be a win-win for the Township.

Mr. Dowling questioned the number of spots Mr. Turner considered with the consolidation.

Mr. Sirb noted it is the Board's responsibility to minimize the extent of the variance you are asking for.

Mr. Seltzer noted with his wife's business, she is not looking for it to grow now. Mr. Seltzer noted in a year or two down the road if they want to add another stylist they would need additional parking spaces to comply. He noted adding the spaces now would save them from coming back to apply for another variance in the future. He noted they propose one area 30x33, add a handicap space and two more spaces.

Ms. Macdonald-Matthes noted that the law is clear with a variance. She noted that preventing the extra parking spaces would impair the adjacent property. She noted there is a concern with a parcel of land that was questioned by Mr. Dowling. She noted turning a blighted property into a well maintained parcel will be beneficial to not only the property but surrounding business owners.

Mr. Sirb noted they are not impairing the business, the growth possibility. He noted another business could come in and use the spots they have already.

Mr. Macdonald-Matthes noted the case law stated verbiage impair development of the adjacent property. She noted if the salon is successful yet cannot further develop it that would impair the business.

Mr. Sirb noted is does not specifically state impair for growth.

Ms. Macdonald-Matthes noted they are not only anticipating growth, but this is a necessity for a business.

Mr. Staub questioned if anyone in the audience would like to speak on Docket 1386.

No response was heard from the audience.

Mr. Staub noted this Docket is not as popular as Hornung's.

Mr. Staub swore in Mary Ann Haschert, 1508 Pine Hollow Road.

Ms. Haschert noted that this is very informative and interesting. She noted since the comment was made about not being as popular as Hornung's and she attended the first hearing. She noted that the past hearing was no better than the first, the information was very flawed, unclear and confusing. She noted her husband had many questions and had to obtain a Right to Know request. She noted she herself is a business owner and you go to all this effort with rules and regulations it would be very unfair of the Board to not approve this variance.

Mr. Sirb noted to Ms. Haschert brought up a good point. He noted with the last hearing, in talking with setting a precedence, he does not want to set a precedence at any time. He noted he wants to hear a good valued argument of what that should be done. He noted in this case, like Mr. Dowling, there is not much that can be done with the property. He noted he wants to hear exactly why a variance need to be granted. He noted he never sets a precedence and he never gives things away.

Ms. Haschert noted she will from time to time meet her daughters or friends at the beauty salon and adds to the parking. She noted the Board should support the business owner.

Mr. Haschert noted he would like to make a public comment. He noted everyone knows the sanario.

Ms. Macdonald-Matthes noted asked if he could be put on record.

Mr. Turner noted Mr. Haschert was previously sworn in under the last hearing.

Mr. Haschert noted since this is a hair salon, with a Board of Supervisor having a hair salon. He questioned if preferential treatment is given, or is a challenge being given to competition. He noted how many times he could come here, once or every week and he will put a stop to what is happening.

Mr. Staub noted personally, he is speaking of Supervisor Robin Lindsey. He noted the thought never occurred to him that a variance would not be granted because of competition to Robin's hair salon all the way on the other side of the Township.

Mr. Sirb noted to Mr. Haschert he had no clue she had a hair salon.

Mr. Dowling questioned the five factors. He noted he feels reasonably confident that factors one through four have been met. He noted the hang up is on factor number five, if the variance is necessary. Mr. Dowling questioned if there are any comments for the fifth factor. Ms. Macdonald-Matthes answered the fifth factor is satisfied based on the presentation. She noted to reiterate, the fact remains nothing can be done with the property. Mr. Dowling noted that is factors one through four. Ms. Macdonald noted it is factors one through four and also five because the minimum relief if counter intuitive, that the variance will not alter the character or district, or impair the use or development. She noted this is a solution for a blighted property in

the Township, turning it into a well maintained parking lot suggested by Mr. Turner. She noted with the variance being granted tonight it will not only alter the character of the neighborhood but will be a solution to fix further potential blighting, should another owner take over this property. She noted it is absolutely essential and a matter of necessity for this business.

Mr. Dowling noted they understand the position. He noted the township officials require a thirty foot buffer and that cannot work here. He noted the business can operate if it has one parking spot. He noted a motion.

Mr. Sirb noted he agrees with Mr. Dowling the business may not be able to grow but it will be viable. He noted to make that distinction, to be open with one space, a handicap space, you can operate but can you grow.

Mr. Dowling makes a motion.

Mr. Staub questioned if the Township has a position on this. Ms. Zerbe answered we do not.

Mr. Staub noted his motion is that we grant the variance for one handicap space, one handicap isle and one additional parking space, all other land to be used as a buffer or landscaped by the Township. He noted this motion to grant rather than grant the variance of one handicap space, a handicap accessible isle and two spaces. He noted his motion is to grant the application with one handicap space, handicap isle, and one additional space measuring 9x18, all other property to be a buffer zone.

Mr. Sirb questioned if two spaces will fit instead of one. Mr. Turner answered it would be with the Township and the Township requirements. Ms. Zerbe answered yes.

Mr. Staub noted a motion with the condition, he questioned if there is a second.

Mr. Sirb noted he is inclined to give Mr. Seltzer a chance to grow a viable business. He noted to give three spots. He noted to grant a motion of Docket 1386 as submitted.

Mr. Staub noted a second by Mr. Fisher.

Mr. Staub questioned if the Board had any additional comments.

Mr. Hansen noted to request to consolidate the lots within 90 days.

Mr. Sirb noted he will add that as an amendment.

Mr. Staub questioned Mr. Watson answered yes.

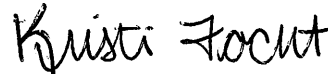
Mr. Sirb noted that the Board has 45 days to render a decision; he questioned if the board wished to take action on Docket 1386.

Mr. Staub requested Mr. Turner to conduct a roll call vote: Mr. Fisher, aye; Mr. Hansen, aye; Mr. Dowling, aye; and Mr. Sirb, aye; Mr. Staub aye.

Mr. Sirb noted that Docket 1386 variance was granted.

The hearing ended at 8:23 p.m.

Respectfully submitted,

A handwritten signature in black ink that reads "Kristi Focht". The signature is written in a cursive, slightly stylized font.

Kristi Focht  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
SELTZER PROPERTIES, LLC : DOCKET NO. 1386

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance from parking lot design requirements in connection with the creation of a new parking lot. A hearing on the application was held on June 23, 2016.

#### **Facts**

1. The applicant and owner of the property in question is Seltzer Properties, LLC of 8002 Jefferson Street, Harrisburg, Pennsylvania. The applicant was represented at the hearing by Brian Seltzer, a principal in the LLC, and by Paige Macdonald-Matthes, Esquire.

2. The property in question is located on the east side of Mountain Road and consists of a rectangular parcel with 40 feet of frontage, extending 100 feet in depth. The property adjoins another property owned by the applicant to the south.

3. The existing property is in a distressed condition. The applicant intends to clear and landscape the property and to create an additional parking area to service the property to the south which is improved for use as a beauty shop. The applicant intends to pave a 30 feet wide by 33 feet deep area in the rear of the lot. This will accommodate a handicapped parking space for the beauty shop with the required access aisle as well as two additional parking spaces.

4. Notice of the hearing was posted and advertisement made as required by the ordinance.

5. In addition to the applicant, one township resident appeared before the Board. The resident did not live in or own property in the vicinity of the property but expressed support for the variance.

### **Conclusions**

1. Section 603 of the ordinance sets forth various design standards for parking lots which the proposed parking area would violate, including required landscape strips and separation areas.

2. Article 111.D.3 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property in question is burdened by a hardship not created by the owner consisting of its limited lot area. Similarly burdened is the applicant's other property to the south which is too small in area to accommodate the parking required by the uses which are permitted in the district.

4. Granting the variance will not alter the essential character of the neighborhood nor impair surrounding property values. The applicant's project is greatly improving the property in question which has been distressed for years. The combined use of the properties will prevent the need for further variances to allow development of

the property in question. By consolidating the properties this benefit can be made permanent.

**Decision**

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variances requested should be and are hereby granted. These variances are granted on the condition that the applicant consolidate the properties in question into a single parcel within ninety (90) days of the date of this decision.

Date: 7/22/16

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

\_\_\_\_\_  
Jeffrey W. Staub, Chair

\_\_\_\_\_  
Gregory P. Sirb

\_\_\_\_\_  
David B. Dowling

\_\_\_\_\_  
Allan Hansen

\_\_\_\_\_  
Watson Fisher